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SELECTIONS FROM THE RECORDS OF THE BOMBAY GOVERNMENT.

No. XCII.—New Series.

PAPERS

RELATING TO THE

CONSTITUTION AND FUNCTIONS

OF THE

COUNCIL OF HIS EXCELLENCY THE GOVERNOR OF BOMBAY

FOR MAKING

LAWS AND REGULATIONS.

Bombay:
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1865.

NOTE.

THIS collection of papers, relating to the constitution and functions of the Council of His Excellency the Governor of Bombay for making Laws and Regulations, is published in accordance with the Resolutions of Government in the Legislative Department, No. 214 of the 28th July, and No. 279 A of the 31st August, 1865. Some of the papers now published do not relate exclusively to the Bombay Council, but they have been included in the collection as they contain the instructions either of Her Majesty's Secretary of State or of the Government of India on subjects connected with the working of the Indian Councils Act; and these instructions, though issued in the first instance in reference to circumstances which had arisen in the other Presidencies, may still be held to be as applicable in the Bombay Presidency as elsewhere.

H. BIRDWOOD,

Under-Secretary to Government.

Poona, 13*th September* 1865.

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THE INDIAN COUNCILS ACT, 1861.

ANNO VICESIMO QUARTO & VICESIMO QUINTO VICTORIÆ REGINÆ.

****

CAP. LXVII.

An Act to make better Provision for the Constitution of the Council of the Governor General of India, *and for the Local Government of the several Presidencies and Provinces of* India, *and for the temporary Government of* India *in the event of a Vacancy in the Office of Governor General.*

[1*st August* 1861.]

WHEREAS it is expedient that the Provisions of former Acts of Parliament respecting the Constitution and Functions of the Council of the Governor General of *India* should be consolidated, and in certain respects amended, and that Power should be given to the Governors in Council of the Presidencies of *Fort Saint George* and *Bombay* to make Laws and Regulations for the Government of the said Presidencies, and that Provision should be made for constituting the like Authority in other Parts of Her Majesty's *Indian* Dominions: Be it therefore declared and enacted by the Queen's Most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :—

Short Title.

1. This Act may be cited for all Purposes as "The *Indian* Councils Act, 1861."

Acts and Parts of Acts Repealed.

2. Sections Forty, Forty-three, Forty-four, Fifty, Sixty-six, Seventy, and so much of Sections Sixty-one and Sixty-four as relates to Vacancies in the Office of ordinary Member of the Council of *India*, of the Act of the Third and Fourth Years of King *William*

the Fourth, Chapter Eighty-five, for effecting an Arrangement with the *East India* Company, and for the better Government of Her Majesty's *Indian* Territories, till the Thirtieth Day of *April* One thousand Eight hundred and Fifty-four, Sections Twenty-two, Twenty-three, Twenty-four, and Twenty-six of the Act of the Sixteenth and Seventeenth Years of Her Majesty, Chapter Ninety-five, "to provide for the Government of *India*," and the Act of the Twenty-third and Twenty-fourth Years of Her Majesty, Chapter Eighty-seven, "to remove Doubts as to the Authority of the Senior Member of the Council of the Governor General of *India* in the Absence of the President," are hereby repealed, and all other Enactments whatsoever now in force with relation to the Council of the Governor General of *India*, or to the Councils of the Governors of the respective Presidencies of *Fort St. George* and *Bombay*, shall, save so far as the same are altered by or are repugnant to this Act, continue in force, and be applicable to the Council of the Governor General of *India* and the Councils of the respective Presidencies under this Act.

Composition of the Council of the Governor General of India.

3. There shall be Five ordinary Members of the said Council of the Governor General, Three of whom shall from time to time be appointed by the Secretary of State for *India* in Council, with the Concurrence of a Majority of Members present at a Meeting, from among such Persons as shall have been, at the Time of such Appointment, in the Service in *India* of the Crown, or of the Company and the Crown, for at least Ten Years; and if the Person so appointed shall be in the Military Service of the Crown he shall not, during his Continuance in office as a Member of Council, hold any Military command, or be employed in actual Military Duties; and the remaining Two, One of whom shall be a Barrister or a Member of the Faculty of Advocates in *Scotland* of not less than Five Years' Standing, shall be appointed from time to time by Her Majesty by Warrant under Her Royal Sign Manual; and it shall be lawful for the Secretary of Sate in Council to appoint the Commander-in-Chief of Her Majesty's Forces in *India* to be an extraordinary Member of the said Council, and such extraordinary Member of Council shall have Rank and Precedence at the Council Board next after the Governor General.

Present Members of Council to continue.

4. The present ordinary Members of the Council of the Governor General of *India* shall continue to be ordinary Members under and for the Purposes of this Act; and it shall be lawful for Her Majesty, on the passing of this Act, to appoint by Warrant as aforesaid an ordinary Member of Council, to complete the Number of Five hereby established; and there shall be paid to such ordinary Member, and to all other ordinary Members who may be hereafter appointed, such Amount of Salary as may from Time to Time be fixed for Members of the Council of the Governor General by the Secretary of State in Council, with the Concurrence of a Majority of Members of Council present at the Meeting; and all Enactments of any Act of Parliament, or Law of *India* respecting the Council of the Governor General of *India* and the Members thereof shall be held to apply to the said Council as constituted by this Act, except so far as they are repealed by or are repugnant to any Provisions of this Act.

Power of making provisional appointments of Members of Council by Secretary of State.

5. It shall be lawful for the Secretary of State in Council with the Concurrence of a Majority of Members present at a Meeting, and for Her Majesty, by Warrant as aforesaid, respectively, to appoint any Person provisionally to succeed to the Office of ordinary Member of the Council of the Governor General when the same shall become vacant by the Death or Resignation of the Person holding the said Office, or on his Departure from *India* with Intent to return to *Europe*, or on any Event and Contingency expressed in any such Provisional Appointment, and such Appointment again to revoke; but no Person so appointed to succeed provisionally to such Office shall be entitled to any Authority, Salary, or Emolument appertaining thereto until he shall be in the actual possession of such Office.

Provision on absence of Governor General in other Parts of India.

6. Whenever the said Governor General in Council shall declare that it is expedient that the said Governor General should visit any Part of *India* unaccompanied by his Council, it shall be lawful for the said Governor General in Council, previously to the Departure of the said Governor General, to nominate some

Member of the said Council to be President of the said Council, in whom during the Time of such Visit the Powers of the said Governor General in Assemblies of the said Council shall be reposed, except that of assenting to or withholding his Assent from, or reserving for the Signification of Her Majesty's Pleasure, any Law or Regulation, as hereinafter provided; and it shall be lawful in every such Case for the said Governor General in Council, by an Order for that Purpose to be made, to authorize the Governor General alone to exercise all or any of the Powers which might be exercised by the said Governor General in Council in every Case in which the said Governor General may think it expedient to exercise the same, except the Power of making Laws or Regulations.

Provision on absence of Governor General from Meeting.

7. Whenever the Governor General, or such President so nominated as aforesaid shall be obliged to absent himself from any Meeting of Council (other than Meetings for the Purpose of making Laws and Regulations, as hereinafter provided), owing to Indisposition or any other Cause whatsoever, and shall signify his intended Absence to the Council, then and in every such Case the senior Member for the Time being who shall be present at such Meeting shall preside thereat, in such Manner, and with such full Powers and Authorities during the time of such Meeting, as such Governor General or President would have had in case he had been present at such Meeting: Provided always that no Act of Council made at any such Meeting shall be valid to any Effect whatsoever unless the same shall be signed by such Governor General or President respectively, if such Governor General or President shall at the time be resident at the Place at which such Meeting shall be assembled, and shall not be prevented by such Indisposition from signing the same: Provided always that in case such Governor General or President, not being so prevented as aforesaid, shall decline or refuse to sign such Act of Council, he, and the several Members of Council who shall have signed the same, shall mutually exchange with and communicate in Writing to each other the Grounds and Reasons of their respective Opinions, in like Manner and subject to such Regulations and ultimate Responsibility as are by an Act of the Thirty-third Year of King *George* the Third, Chapter Fifty-

two, Sections Forty-seven, Forty-eight, Forty-nine, Fifty, and Fifty-one, provided and described in Cases where such Governor General shall, when present, dissent from any Measure proposed or agitated in the Council.

Power of Governor General to make Rules for Conduct of Business.

8. It shall be lawful for the Governor General from Time to Time to make Rules and Orders for the more convenient Transaction of Business in the said Council; and any Order made or Act done in accordance with such Rules and Orders (except as hereafter provided respecting Laws and Regulations) shall be deemed to be the Order or Act of the Governor General in Council.

Power to Council to assemble at any Place in India.

9. The said Council shall from Time to Time assemble at such Place or Places as shall be appointed by the Governor General in Council within the Territories of *India*; and as often as the said Council shall assemble within either of the Presidencies of *Fort Saint George* or *Bombay*, the Governor of such Presidency shall act as an extraordinary Member of Council; and as often as the said Council shall assemble within any other Division, Province, or Territory having a Lieutenant Governor, such Lieutenant Governor shall act as an additional Councillor at Meetings of the Council, for the Purpose of making Laws and Regulations only, in manner hereinafter provided.

Additional Members to be summoned for the purpose of making Laws and Regulations.

10. For the better Exercise of the Power of making Laws and Regulations vested in the Governor General in Council, the Governor General shall nominate, in addition to the ordinary and extraordinary Members above mentioned, and to such Lieutenant Governor in the Case aforesaid, such Persons, not less than Six nor more than Twelve in Number, as to him may seem expedient, to be Members of Council for the Purpose of making Laws and Regulations only, and such Persons shall not be entitled to sit or vote at any Meeting of Council, except at Meetings held for such Purpose: Provided that not less than One Half of the Persons so nominated shall be non-official Persons, that is, Persons who, at the Date of such Nomination, shall not be in the Civil or Military Service of the Crown in *India*, and that the Seat in Council of any non-official

Member accepting Office under the Crown in *India* shall be vacated on such Acceptance.

Additional Members to be appointed for Two Years.

11. Every additional Member of Council so nominated shall be summoned to all Meetings held for the Purpose of making Laws and Regulations, for the Term of Two Years from the Date of such Nomination.

Resignation of Additional Members.

12. It shall be lawful for any such additional Member of Council to resign his Office to the Governor General, and on Acceptance of such Resignation by the Governor General such Office shall become vacant.

Power to fill up Vacancy in Number of additional Members.

13. On the event of a Vacancy occurring by the Death, Acceptance of Office, or Resignation, accepted in manner aforesaid, of any such additional Member of Council, it shall be lawful for the Governor General to nominate any Person as additional Member of Council in his Place, who shall exercise the same Functions until the Termination of the Term for which the additional Member so dying, accepting Office, or resigning was nominated: Provided always that it shall not be lawful for him by such Nomination to diminish the Proportion of non-official additional Members hereinbefore directed to be nominated.

No Law to be invalid by reason of Number of non-official Members being incomplete.

14. No Law or Regulation made by the Governor General in Council, in accordance with the Provisions of this Act, shall be deemed invalid by reason only that the Proportion of non-official additional Members hereby provided was not complete at the Date of its Introduction to the Council or its Enactment.

Senior ordinary Member of Council to preside at Meetings for making Laws and Regulations in Absence of Governor General, &c. Quorum.

15. In the Absence of the Governor General and of the President, nominated as aforesaid, the senior ordinary Member of the Council present shall preside at Meetings of the Council for making Laws and Regulations; and the Power of making Laws and Regulations vested in the Governor General in Council shall be exercised only at Meetings of the said Council at which such Governor General or President, or some ordinary Member of Council, and Six or more Members of the said Council (including

under the term Members of the Council such additional Members as aforesaid), shall be present; and in every Case of Difference of Opinion at Meetings of the said Council for making Laws and Regulations where there shall be an Equality of Voices, the Governor General, or in his Absence the President, and in the Absence of the Governor General and President such Senior ordinary Member of Council there presiding, shall have Two Votes or the Casting Vote.

Governor General to appoint First Meeting for making Laws and Regulations.

16. The Governor General in Council shall, as soon as conveniently may be, appoint a Place and Time for the First Meeting of the said Council of the Governor General for making Laws and Regulations under this Act, and summon thereto as well the additional Councillors nominated by and under this Act as the other Members of such Council; and until such First Meeting the Powers now vested in the said Governor General of *India* in Council of making Laws and Regulations shall and may be exercised in like Manner and by the same Members as before the passing of this Act.

Power to appoint and adjourn Meetings for making Laws and Regulations.

17. It shall be lawful for the Governor General in Council from time to time to appoint all other Times and Places of Meeting of the Council for the Purpose of making Laws and Regulations under the Provisions of this Act, and to adjourn, or from time to time to authorise such President, or Senior ordinary Member of Council in his Absence, to adjourn any Meeting for the Purpose of making Laws and Regulations from Time to Time and from Place to Place.

Governor General to make Rules for Conduct of Business at such Meetings.

18. It shall be lawful for the Governor General in Council to make Rules for the Conduct of Business at Meetings of the Council for the purpose of making Laws and Regulations under the Provisions of this Act, prior to the First of such Meetings, but such Rules may be subsequently amended at Meetings for the purpose of making Laws or Regulations, subject to the Assent of the Governor General; and such Rules shall prescribe the Mode of Promulgation and Authentication of such Laws and Regulations:

Provided always that it shall be lawful for the Secretary of State in Council to disallow any such Rule, and to render it of no Effect.

Business to be transacted at such Meetings.

19. No Business shall be transacted at any Meeting for the Purpose of making Laws and Regulations, except as last hereinbefore provided, other than the Consideration and Enactment of Measures introduced into the Council for the Purpose of such Enactment; and it shall not be lawful for any Member or additional Member to make or for the Council to entertain any Motion, unless such Motion be for Leave to introduce some Measure as aforesaid into Council, or have reference to some Measure actually introduced thereinto: Provided always that it shall not be lawful for any Member or additional Member to introduce, without the previous Sanction of the Governor General, any Measure affecting—

1*st.*—The Public Debt or Public Revenues of *India*, or by which any Charge would be imposed on such Revenues;

2*nd.*—The Religion or Religious Rites and Usages of any Class of Her Majesty's Subjects in *India*:

3*rd.*—The Discipline or Maintenance of any Part of Her Majesty's Military or Naval Forces:

4*th.*—The Relations of the Government with Foreign Princes or States.

Assent of Governor General to Laws made at such Meetings.

20. When any Law or Regulation has been made by the Council at a Meeting for the Purpose of making Laws and Regulations as aforesaid, it shall be lawful for the Governor General, whether he shall or shall not have been present in Council at the making thereof, to declare that he assents to the same, or that he withholds his Assent from the same, or that he reserves the same for the Signification of the pleasure of Her Majesty thereon; and no such Law or Regulation shall have Validity until the Governor General shall have declared his Assent to the same, or until (in the Case of a Law or Regulation so reserved as aforesaid) Her Majesty shall have signified Her Assent to the same to the Governor General, through the Secretary of State for *India* in Council, and such Assent shall have been duly proclaimed by the said Governor General.

21. Whenever any such Law or Regulation has been assented to by the Governor General, he shall transmit to the Secretary of State for *India* an authentic Copy thereof; and it shall be lawful for Her Majesty to signify, through the Secretary of State for *India* in Council, Her Disallowance of such Law; and such Disallowance shall make void and annul such Law from or after the Day on which the Governor General shall make known, by Proclamation or by Signification to his Council, that he has received the Notification of such Disallowance by Her Majesty.

Power of the Crown to disallow Laws made at such Meetings.

22. The Governor General in Council shall have Power at Meetings for the Purpose of making Laws and Regulations as aforesaid, and subject to the Provisions herein contained, to make Laws and Regulations for repealing, amending, or altering any Laws or Regulations whatever now in force or hereafter to be in force in the *Indian* Territories now under the dominion of Her Majesty, and to make Laws and Regulations for all persons, whether *British* or Native, Foreigners or others, and for all Courts of Justice whatever, and for all places and things whatever within the said Territories, and for all servants of the Government of India within the Dominions of Princes and States in Alliance with Her Majesty; and the Laws and Regulations so to be made by the Governor General in Council shall control and supersede any Laws and Regulations in anywise repugnant thereto which shall have been made prior thereto by the Governors of the Presidencies of *Fort Saint George* and *Bombay* respectively in Council, or the Governor or Lieutenant Governor in Council of any Presidency or other Territory for which a Council may be appointed, with Power to make Laws and Regulations, under and by virtue of this Act: Provided always that the said Governor General in Council shall not have the Power of making any Laws and Regulations which shall repeal or in any way affect any of the Provisions of this Act:

Extent of the Powers of the Governor General in Council to make Laws and Regulations at such Meetings.

Or any of the Provisions of the Acts of the Third and Fourth years of King *William* the Fourth, Chapter Eighty-five, and of the Sixteenth and Seventeenth Years of Her Majesty, Chapter Ninety-five, and of the Seventeenth and Eighteenth

Years of Her Majesty, Chapter Seventy-seven, which after the passing of this Act shall remain in force:

Or any Provisions of the Act of the Twenty-first and Twenty-second Years of Her Majesty, Chapter One hundred and six, entitled *An Act for the better Government of India*; or of the Act of the Twenty-second and Twenty-third Years of Her Majesty, Chapter Forty-one, to amend the same:

Or of any Act enabling the Secretary of State in Council to raise Money in the United Kingdom for the Government of *India*:

Or of the Acts for punishing Mutiny and Desertion in Her Majesty's Army or in Her Majesty's *Indian* Forces respectively, but subject to the Provision contained in the Act of the Third and Fourth Years of King *William* the Fourth, Chapter Eight-five, Section Seventy-three, respecting the *Indian* Articles of War:

Or any Provisions of any Act passed in this present Session of Parliament, or hereafter to be passed, in any wise affecting Her Majesty's *Indian* Territories, or the Inhabitants thereof;

Or which may affect the Authority of Parliament, or the Constitution and Rights of the *East India* Company, or any Part of the unwritten Laws or Constitution of the United Kingdom of *Great Britain* and *Ireland*, whereon may depend in any Degree the Allegiance of any Person to the Crown of the United Kingdom, or the Sovereignty or Dominion of the Crown over any Part of the said Territories.

Governor General may make Ordinances having Force of Law in Cases of urgent Necessity.

23. Notwithstanding anything in this Act contained, it shall be lawful for the Governor General, in Cases of Emergency, to make and promulgate from time to time Ordinances for the Peace and good Government of the said Territories or of any Part thereof, subject however to the Restrictions contained in the last preceding Section; and every such Ordinance shall have like Force of Law with a Law or Regulation made by the Governor General in Council, as by this Act provided, for the Space of not more than Six Months from its Promulgation, unless the Disallowance of such Ordinance by Her Majesty shall be earlier signified to the

Governor General by the Secretary of State for *India* in Council, or unless such Ordinance shall be controlled or superseded by some Law or Regulation made by the Governor General in Council at a Meeting for the Purpose of making Laws and Regulations as by this Act provided.

No Law, &c. invalid by reason of it affecting any prerogative of the Crown.

24. No Law or Regulation made by the Governor General in Council (subject to the Power of Disallowance by the Crown, as hereinbefore provided) shall be deemed invalid by reason only that it affects the Prerogative of the Crown.

Laws made for the Non-Regulation Provinces declared valid.

25. Whereas Doubts have been entertained whether the Governor General of *India*, or the Governor General of *India* in Council, had the Power of making Rules, Laws, and Regulations for the Territories known from time to time as "Non-Regulation Provinces," except at Meetings for making Laws and Regulations, in conformity with the Provisions of the said Acts of the Third and Fourth Years of King *William* the Fourth, Chapter Eighty-five, and of the Sixteenth and Seventeenth Years of Her Majesty, Chapter Ninety-five, and whether the Governor, or Governor in Council, or Lieutenant Governor of any Presidency or Part of *India* had such Power in respect of any such Territories: Be it enacted, That no Rule, Law, or Regulation which prior to the passing of the Act shall have been made by the Governor General, or Governor General in Council, or by any other of the Authorities aforesaid, for and in respect of any such Non-Regulation Province, shall be deemed invalid only by reason of the same not having been made in conformity with the Provisions of the said Acts, or of any other Act of Parliament respecting the Constitution and Powers of the Council of *India* or of the Governor General, or respecting the Powers of such Governors, or Governors in Council, or Lieutenant Governors as aforesaid.

Provision for Leave of Absence to an ordinary Member of Council.

26. It shall be lawful for the Governor General in Council, or Governor in Council of either of the Presidencies, as the Case may be, to grant to an ordinary Member of Council Leave of Absence under Medical Certificate, for a Period not exceeding Six Months;

and such Member, during his Absence, shall retain his Office, and shall, on his Return and Resumption of his Duties, receive Half his Salary for the Period of such Absence, but if his Absence shall exceed Six Months, his Office shall be vacated.

Power of making temporary Appointments of Members of Council by Governor General or Governor of a Presidency.

27. If any Vacancy shall happen in the Office of an ordinary Member of the Council of the Governor General, or of the Council of either of the Presidencies, when no Person provisionally appointed to succeed thereto shall be then present on the Spot, then, and on every such occasion, such Vacancy shall be supplied by the Appointment of the Governor General in Council, or the Governor in Council, as the Case may be; and until a Successor shall arrive the Person so nominated shall execute the Office to which he shall have been appointed, and shall have all the Powers thereof, and shall have and be entitled to the Salary and other Emoluments and Advantages appertaining to the said Office during his Continuance therein, every such temporary Member of Council foregoing all Salaries and Allowances by him held and enjoyed at the time of his being appointed to such Office; and if any ordinary Member of the Council of the Governor General, or of the Council of either of the Presidencies, shall, by any Infirmity or otherwise, be rendered incapable of acting or of attending to act as such, or if any such Member shall be absent on Leave, and if any Person shall have been provisionally appointed as aforesaid, then the Place of such Member absent or unable to attend shall be supplied by such Person; and if no Person provisionally appointed to succeed to the Office shall be then on the Spot, the Governor General in Council, or Governor in Council, as the Case may be, shall appoint some Person to be a temporary Member of Council, and, until the Return of the Member so absent or unable to attend, the Person so provisionally appointed by the Secretary of State in Council, or so appointed by the Governor General in Council, or Governor in Council, as the Case may be, shall execute the Office to which he shall have been appointed, and shall have all the Powers thereof, and shall receive Half the Salary of the Member of Council whose Place he supplies and also Half the Salary of the Office under the Government of *India* or the Government of either of the Presidencies, as the Case

may be, if he hold any such Office, the remaining Half of such last-named Salary being at the Disposal of the Government of *India*, or other Government as aforesaid: Provided always that no Person shall be appointed a temporary Member of the said Council who might not have been appointed as hereinbefore provided to fill the Vacancy supplied by such temporary Appointment.

Power to Governors of Fort Saint George and Bombay to make Rules for the Conduct of Business.

28. It shall be lawful for the Governors of the Presidencies of *Fort Saint George* and *Bombay* respectively from Time to Time to make Rules and Orders for the Conduct of Business in their Councils, and any Order made or Act done in accordance with such Directions (except as hereinafter provided respecting Laws and Regulations) shall be deemed to be the Order or Act of the Governor in Council.

Power to summon additional Members to the Council of Fort Saint George and Bombay for the purpose of making Laws and Regulations.

29. For the better Exercise of the Power of making Laws and Regulations hereinafter vested in the Governors of the said Presidencies in Council respectively, each of the said Governors shall, in addition to the Members whereof his Council now by Law consists, or may consist, termed herein ordinary Members, nominate to be additional Members the Advocate General of the Presidency, or Officer acting in that Capacity, and such other Persons, not less than Four nor more than Eight in Number, as to him may seem expedient, to be Members of Council, for the Purpose of making Laws and Regulations only, and such Members shall not be entitled to sit or vote at any Meeting of Council, except at Meetings held for such Purpose; provided that not less than Half of the Persons so nominated shall be Non-official Persons, as hereinbefore described, and that the Seat in Council of any Non-official Member accepting Office under the Crown in *India* shall be vacated on such Acceptance.

Additional Members to be appointed for two years.

30. Every additional Member of Council so nominated shall be summoned to all Meetings held for the Purpose of making Laws and Regulations for the Term of Two Years from the Date of such Nomination.

Resignation of additional Members.

31. It shall be lawful for any such additional Member of Council to resign his Office to the Governor of the Presidency; and on Acceptance of such Resignation by the Governor of the Presidency, such Office shall become vacant.

Power to fill up Vacancy in the number of additional Members.

32. On the event of a Vacancy occurring by the Death, Acceptance of Office, or Resignation accepted in manner aforesaid, of any such additional Member of Council, it shall be lawful for the Governor of the Presidency to summon any Person as additional Member of Council in his place, who shall exercise the same Functions until the Termination of the Term for which the additional Member so dying, accepting Office, or resigning was nominated: Provided always it shall not be lawful for him by such Nomination to diminish the Proportion of Non-official Members hereinbefore directed to be nominated.

No Law to be invalid by reason of Incompleteness of Number of Non-official Members.

33. No Law or Regulation made by any such Governor in Council in accordance with the Provisions of this Act shall be deemed invalid by reason only that the Proportion of Non-official additional Members hereby established was not complete at the Date of its Introduction to the Council or its Enactment.

Senior Civil ordinary Member of Council to preside in Absence of Governor of Presidency.

34. At any Meeting of the Council of either of the said Presidencies from which the Governor shall be absent, the senior Civil ordinary Member of Council present shall preside; and the Power of making Laws and Regulations hereby vested in such Governor in Council shall be exercised only at Meetings of such Council at which the Governor or some ordinary Member of Council, and Four or more Members of Council (including under the Term Members of Council such additional Members as aforesaid), shall be present; and in any Case of Difference of Opinion at Meetings of any such Council for making Laws and Regulations, where there shall be an Equality of Voices, the Governor, or in his Absence the senior Member then presiding, shall have Two Votes or the Casting Vote.

35. The Governor General in Council shall, as soon as conveniently may be, appoint the Time for the First Meeting of the Councils of *Fort Saint George* and *Bombay* respectively, for the Purpose of making Laws and Regulations under this Act, and the Governors of the said Presidencies respectively shall summon to such Meeting as well the additional Councillors appointed by and under this Act as the ordinary Members of the said Councils.

Governor General to fix First Meeting of Councils of Presidencies for making Laws and Regulations.

36. It shall be lawful for every such Governor to appoint all subsequent Times and Places of Meeting of his Council for the Purpose of making Laws and Regulations under the Provisions of this Act, and to adjourn or from Time to time to authorize such senior ordinary Member of Council in his Absence to adjourn any Meeting for making Laws and Regulations from Time to Time and from Place to Place.

Governors of Presidencies to appoint subsequent Meetings, and adjourn them.

37. Previously to the first of such Meetings of their Councils for the Purpose of making Laws and Regulations under the Provisions of this Act, the Governors of the said Presidencies in Council respectively shall make Rules for the Conduct of Business at such Meetings, subject to the Sanction of the Governor General in Council; but such Rules may be subsequently amended at Meetings for the Purpose of making Laws and Regulations, subject to the Assent of the Governor: Provided always, that it shall be lawful for the Governor General in Council to disallow any such Rule, and render the same of no Effect.

Governors to make Rules and Orders for Conduct of Business at such Meetings.

38. No business shall be transacted at any Meeting of the Council of either of the said Presidencies for the Purpose of making Laws and Regulations (except as last hereinbefore provided) other than the Consideration and Enactment of Measures introduced into such Council for the Purpose of such Enactment; and it shall not be lawful for any Member or additional Member to make, or for the Council to entertain any Motion, unless such Motion shall be for Leave to introduce some Measure as aforesaid into Council, or have

Business to be transacted at such Meetings.

reference to some Measure actually introduced thereinto: Provided always that it shall not be lawful for any Member or additional Member to introduce, without the previous Sanction of the Governor, any Measure affecting the Public Revenues of the Presidency, or by which any Charge shall be imposed on such Revenues.

Governors to assent to Laws and Regulations of Presidencies.

39. When any Law or Regulation has been made by any such Council at a Meeting for the Purpose of making Laws and Regulations as aforesaid, it shall be lawful for the Governor, whether he shall or shall not have been present in Council at such Meeting, to declare that he assents to, or withholds his Assent from the same.

Governor General to assent to Laws and Regulations of Presidencies.

40. The Governor shall transmit fothwith an authentic Copy of every Law or Regulation to which he shall have so declared his Assent to the Governor General, and no such Law or Regulation shall have Validity until the Governor General shall have assented thereto, and such Assent shall have been signified by him to and published by the Governor; Provided always, that in every Case where the Governor General shall withhold his Assent from any such Law or Regulation, he shall signify to the Governor in Writing his Reason for so withholding his Assent.

Power of the Crown to disallow Laws and Regulations of Presidencies.

41. Whenever any such Law or Regulation shall have been assented to by the Governor General, he shall transmit to the Secretary of State for *India* an authentic Copy thereof; and it shall be lawful for Her Majesty to signify, through the Secretary of State for *India* in Council, Her Disallowance of such Law or Regulation, and such Disallowance shall make void and annul such Law or Regulation from or after the Day on which such Governor shall make known by Proclamation, or by Signification to the Council, that he has received the Notification of such Disallowance by Her Majesty.

Extent of Power of Governor of Presidency in Council to make Laws and Regulations.

42. The Governor of each of the said Presidencies in Council shall have power at Meetings for the Purpose of making Laws and Regulations as aforesaid, and, subject to the Provisions herein contained, to make Laws and Regulations for the Peace

and good Government of such Presidency, and for that Purpose to repeal and amend any Laws and Regulations made prior to the coming into Operation of this Act by any Authority in *India*, so far as they affect such Presidency: Provided always, that such Governor in Council shall not have the Power of making any Laws or Regulations which shall in any way affect any of the Provisions of this Act, or of any other Act of Parliament in force, or hereafter to be in force, in such Presidency.

Governor of Presidency, except with sanction of Governor General, not to make or take into consideration certain Laws or Regulations.

43. It shall not be lawful for the Governor in Council of either of the aforesaid Presidencies, except with the sanction of the Governor General, previously communicated to him, to make Regulations or take into consideration any Law or Regulation for any of the Purposes next hereinafter mentioned; that is to say,

1. Affecting the Public Debt of India, or the Customs Duties, or any other Tax or Duty now in force and imposed by the Authority of the Government of India for the general purposes of such Government:
2. Regulating any of the current Coin, or the Issue of any Bills, Notes, or other Paper Currency:
3. Regulating the Conveyance of Letters by the Post Office or Messages by the Electric Telegraph within the Presidency:
4. Altering in any way the Penal Code of *India*, as established by Act of the Governor General in Council, No. 42 of 1860:
5. Affecting the Religion or Religious Rites and Usages of any Class of Her Majesty's Subjects in *India*:
6. Affecting the Discipline or Maintenance of any Part of Her Majesty's Military or Naval Forces:
7. Regulating Patents or Copyright:
8. Affecting the Relations of the Government with Foreign Princes or States:

Provided always that no Law, or Provision of any Law or Regulation which shall have been made by any such Governor in Council, and assented to by the Governor General as aforesaid,

shall be deemed invalid only by reason of its relating to any of the Purposes comprised in the above List.

Governor General may establish Councils for making Laws and Regulations in the Presidency of Fort William in Bengal and in other Parts of India.

44. The Governor General in Council, so soon as it shall appear to him expedient, shall, by Proclamation, extend the Provisions of this Act touching the making of Laws and Regulations for the Peace and good Government of the Presidencies of *Fort Saint George* and *Bombay* to the *Bengal* Division of the Presidency of *Fort William*, and shall specify in such Proclamation the Period at which such Provisions shall take effect, and the Number of Councillors whom the Lieutenant Governor of the said Division may nominate for his Assistance in making Laws and Regulations; and it shall be further lawful for the Governor General in Council, from Time to Time and in his Discretion, by similar Proclamation to extend the same Provisions to the Territories known as the North-Western Provinces and the *Punjab* respectively.

Constitution of such Councils.

45. Whenever such Proclamation as aforesaid shall have been issued regarding the said Division or Territories respectively, the Lieutenant Governor thereof shall nominate, for his Assistance in making Laws and Regulations, such Number of Councillors as shall be in such Proclamation specified; provided that not less than One Third of such Councillors shall in every Case be Non-official Persons, as hereinbefore described, and that the Nomination of such Councillors shall be subject to the Sanction of the Governor General; and provided further, that at any Meeting of any such Council from which the Lieutenant Governor shall be absent, the Member highest in Official Rank among those who may hold Office under the Crown shall preside; and the power of making Laws and Regulations shall be exercised only at Meetings at which the Lieutenant Governor, or some Member holding Office as aforesaid, and not less than One Half of the Members of Council so summoned as aforesaid, shall be present; and in any Case of Difference of Opinion at any Meetings of such Council for making Laws and Regulations, where there shall be an Equality of Voices, the Lieutenant Governor, or such Member highest in Official Rank as aforesaid then presiding, shall have Two Votes or the Casting Vote.

Power to constitute new Provinces and appoint Lieutenant Governors.

46. It shall be lawful for the Governor General, by the Proclamation as aforesaid, to constitute from Time to Time new Provinces for the Purposes of this Act, to which the like Provisions shall be applicable; and further to appoint from Time to Time a Lieutenant Governor to any Province so constituted as aforesaid, and from Time to Time to declare and limit the Extent of the Authority of such Lieutenant Governor, in like Manner as is provided by the Act of the Seventeenth and Eighteenth Years of Her Majesty, Chapter Seventy-seven, respecting the Lieutenant Governors of *Bengal* and the North-Western Provinces.

Power to alter Boundaries of Provinces.

47. It shall be lawful for the Governor General in Council, by such Proclamation as aforesaid, to fix the Limits of any Presidency, Division, Province, or Territory in *India* for the purposes of this Act, and further by Proclamation to divide or alter from Time to Time the Limits of any such Presidency, Division, Province, or Territory for the said Purposes: Provided always, that any Law or Regulation made by the Governor or Lieutenant Governor in Council of any Presidency, Division, Province, or Territory shall continue in force in any part thereof which may be severed therefrom by any such Proclamation until superseded by Law or Regulation of the Governor General in Council, or of the Governor or Lieutenant Governor in Council of the Presidency, Division, Province, or Territory to which such Parts may become annexed.

Former Provisions of this Act extended to future Councils.

48. It shall be lawful for every such Lieutenant Governor in Council thus constituted to make Laws for the Peace and good Government of his respective Division, Province, or Territory; and, except as otherwise hereinbefore specially provided, all the Provisions in this Act contained respecting the Nomination of additional Members for the Purpose of making Laws and Regulations for the Presidencies of *Fort Saint George* and *Bombay* and limiting the Power of the Governors in Council of *Fort Saint George* and *Bombay*, for the Purpose of making Laws and Regulations, and respecting the Conduct of Business in the Meetings of such Councils for that Purpose, and

respecting the Power of the Governor General to declare or withhold his Assent to Laws or Regulations made by the Governor in Council of *Fort Saint George* and *Bombay*, and respecting the Power of Her Majesty to disallow the same, shall apply to Laws or Regulations to be so made by any such Lieutenant Governor in Council.

Previous Assent of the Crown necessary to give Validity to any such Proclamation.

49. Provided always that no Proclamation to be made by the Governor General in Council under the Provisions of this Act, for the Purpose of constituting any Council for the Presidency, Division, Provinces, or Territories hereinbefore named, or any other Provinces, or for altering the Boundaries of any Presidency, Division, Province, or Territory, or constituting any new Province for the Purpose of this Act, shall have any Force or Validity until the Sanction of Her Majesty to the same shall have been previously signified by the Secretary of State in Council to the Governor General.

Provision for the supply of the Office of Governor General in certain Circumstances.

50. If any Vacancy shall happen in the Office of Governor General of *India* when no provisional Successor shall be in *India* to supply such Vacancy, then and in every such Case the Governor of the Presidency of *Fort Saint George* or the Governor of the Presidency of *Bombay* who shall have been first appointed to the Office of Governor by Her Majesty, shall hold and execute the said Office of Governor General of *India* and Governor of the Presidency of *Fort William* in Bengal until a Successor shall arrive, or until some Person in *India* shall be duly appointed thereto; and every such acting Governor General shall, during the Time of his continuing to act as such, have and exercise all the Rights and Powers of Governor General of India, and shall be entitled to receive the Emoluments and Advantages appertaining to the Office by him supplied, such acting Governor General foregoing the Salary and Allowances appertaining to the Office of Governor to which he stands appointed, and such Office of Governor shall be supplied for the time during which such Governor shall act as Governor General in the Manner directed in Section Sixty-three of the Act of the Third and Fourth Years of King *William* the Fourth, Chapter Eighty-five.

If it appears to Governor necessary to exercise Powers before taking his Seat in Council, he may make his Appointment, &c. known by Proclamation.

51. If, on such Vacancy occurring, it shall appear to the Governor, who by virtue of this Act shall hold and execute the said Office of Governor General, necessary to exercise the Powers thereof before he shall have taken his Seat in Council, it shall be lawful for him to make known by Proclamation his Appointment, and his Intention to assume the said Office of Governor General, and after such Proclamation, and thenceforth until he shall repair to the Place where the Council may assemble, it shall be lawful for him to exercise alone all or any of the Powers which might be exercised by the Governor General in Council, except the Power of making Laws and Regulations; and all Acts done in the Exercise of the said Powers, except as aforesaid, shall be of the same Force and Effect as if they had been done by the Governor General in Council; provided that all Acts done in the said Council after the Date of such Proclamation, but before the Communication thereof to such Council, shall be valid, subject nevertheless to Revocation or Alteration by such Governor who shall have so assumed the said Office of Governor General; and from the Date of the Vacancy occurring until such Governor shall have assumed the said Office of Governor General the Provisions of Section Sixty-two of the Act of the Third and Fourth Years of King *William* the Fourth, Chapter Eighty-five, shall be, and the same are declared to be, applicable to the Case.

Nothing in this Act shall derogate from the Powers of the Crown or Secretary of State for India in Council.

52. Nothing in this Act contained shall be held to derogate from or interfere with (except as hereinbefore expressly provided) the Rights vested in Her Majesty, or the Powers of the Secretary of State for India in Council, in relation to the Government of Her Majesty's Dominions in *India* under any Law in force at the Date of the passing of this Act; and all Things which shall be done by Her Majesty, or by the Secretary of State as aforesaid, in relation to such Government, shall have the same Force and Validity as if this Act had not been passed.

53. Wherever any Act or Thing is by this Act required or authorized to be done by the Governor General or by the Governors

Meaning of Term "in Council."

of the Presidencies of *Fort Saint George* and *Bombay* in Council, it is not required that such Act or Thing should be done at a Meeting for making Laws and Regulations, unless where expressly provided.

Time when Act shall come into Operation.

54. Except as hereinbefore specially provided, this Act shall commence and come into operation as soon as the same shall have been published by the said Governor General in Council by Proclamation.*

EXTRACTS (paragraphs 2, 3, 10 *to* 17, 19, 21, 23, *and* 27 *to* 32) *from a Despatch (Legislative) from Her Majesty's Secretary of State for India to the Government of India, No.* 14, *dated the 9th August* 1861.

2. In forwarding to your Lordship in Council the Act which brings to a close the labours of the present Legislative Council of India, it is due to that body that I should place upon record the high sense I entertain of the important services it has rendered in the marked improvement which it has effected in the legislation of India. Since the year 1853, when the Council received its present constitution, it has had to deal with some of the most important questions which could have been submitted to the consideration of any legislative body. The projects of law laid before it have been carefully considered and ably discussed, and the result of its labours has been to place on the Statute Book of India a series of sound and judicious measures which eminently establish its claim to the gratitude of the country and the thanks of Her Majesty's Government.

Objects of the Indian Councils Act of 1861.

3. The principal objects contemplated by the present Act are to impart greater efficiency to the Government of India and to the Governments of the Presidencies of Madras and Bombay in the discharge of their executive functions; to prescribe the mode in which the power of making Laws and Regulations is henceforth to be exercised by the Council of the Governor General; to restore to the Councils of the subordinate Presidencies, at the same time

* The Act was published by the Government of India by Proclamation on the 16th November 1861.

that they are strengthened for the purpose, the power of legislation; to authorize the Governor General in Council, acting under the sanction of the Home Government, to confer upon Lieutenant Governors of Provinces the power of making Laws and Regulations (with the aid of persons specially summoned for that purpose) for the Provinces which they respectively govern; and to provide for the temporary Government of India, in the event of a vacancy in the office of Governor General. To the most important provisions of the Act bearing on these several matters I propose to refer more particularly in the sequel of this Despatch.

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10. Considerable discussion and interchange of opinion between Her Majesty's Government and your Lordship in Council has recently taken place in regard to the best mode of conducting the legislation of India, and on this subject the Act contains some very important provisions. The power of legislation taken away from the Councils of the subordinate Presidencies by the Act of 3rd and 4th William IV., c. 85, is to a great extent to be restored to them, and new local legislatures are to be established in other parts of India. The legislative powers conferred on the Government of India by the abovementioned Act are left unimpaired, but under the present Act are to be exercised for the most part in matters of general administration, and such as affect the interests of our Indian empire at large.

11. I proceed to notice some of the most important provisions by which these changes are to be effected.

Additional members of the Council of the Governor General.

12. In consequence of the repeal, by Section 2 of the present Act, of Section 22 of the Act of the 16th and 17th Vict., c. 95, the Legislative Councillors appointed under the repealed enactment will cease to hold office in the Council on the present Act coming into operation. Provision is made by Section 10 for the appointment of other additional members to the Council of the Governor General, who are to be members only for the purpose of making Laws and Regulations. They are to be selected by the Governor General from the servants of the Government and from other residents in India, European and Native, from all parts of India, the only limitation on the power of selection being that not less than one-half of the

number nominated are to be persons not holding any office under Government.

13. The Imperial Legislature has by this Act provided, for the first time, for the admission of Europeans independent of the Government and of Natives of India to take part in the important work of legislating for India. I have no doubt this measure will be hailed with satisfaction throughout the country. I entertain as little doubt that your Lordship will be able to fill up these appointments with persons in every way qualified to give the Government important and valuable assistance in matters that may come before it; and I anticipate that the introduction of intelligent native gentlemen into the Council will bring to its deliberations a knowledge of the wishes and feelings of the Native population, which cannot fail to improve the laws passed by the Council by adapting them to the wants of the great mass of the population of India.

14. I am quite aware that there cannot but be considerable difficulty in assembling, at any one place, official and non-official persons from distant parts of India who may bring to the Council of the Governor General the advantage of their knowledge of different parts of the country. The grant of legislative powers to Councils in other parts of India renders it less necessary to have such persons present in your Lordship's Council, where at present the whole legislation of India is concentrated; but nevertheless I think it most desirable that servants of the Government in the other Presidencies and from the North-West and the Punjab should be summoned to a body which is to legislate on matters affecting the whole of India; and I shall be glad to find that influential native gentlemen from distant places have, even at some personal inconvenience to themselves, responded to the call of the head of the Government to take their places in the Council when legislating for the peace and good government of their country.

15. To enable your Lordship the more readily to avail yourself of the services of such persons as occasion may require, as well as to obviate the necessity for issuing fresh summonses simultaneously for the whole number of additional Councillors on the expiration of the term of service of those first appointed, which the immediate nomination of the entire number will impose, I think it expedient that your

Lordship should not summon at once the maximum number of members allowed by the Act, but appointing part of them at first, should leave the remaining number to be nominated at such times, and on such occasions, as your Lordship may think proper.

Rules for the conduct of business.

16. It will be the duty of your Lordship in Council to make in the first instance, subject to subsequent alteration at meetings for the purpose of making laws and regulations, the rules for the conduct of business at such meetings. The experience of the past has shown, at it appears to me, that an error was committed in adopting numerous rules under the name of "Standing Orders," and thereby imparting to the proceedings of the Council a much more formal character than was contemplated by the Act of 1853. The rules of procedure at meetings for making laws and regulations should be few and simple, and the business should be conducted, agreeably to your Lordship's suggestions, much in the same way as in a Committee or a Commission. This is the more indispensable in the Council of the Governor General, as well as in those of the North-West and the Punjab, where native gentlemen, unacquainted with the English language, may not improbably be present, and who will be prevented from taking their part in the business of the Council unless some such arrangement be made.

17. No law, except one arising out of some pressing emergency, should be passed without full opportunity for mature deliberation and discussion, and the intervals of discussion should be such as to allow the members of Council adequate opportunity of reflection and inquiry.

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Reports of proceedings.

19. I think it of the highest importance that correct reports of the proceedings of the several Councils, under the authority of the Council itself, should be sent forth to the public, and I request that you will take into your consideration measures for ensuring this very desirable object.

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Sittings of Council.

21. I entertain a decided opinion that the Councils should not sit permanently for the purpose of making laws and regulations, but should be called together

by summons from the head of the Government when projects of law, prepared by the proper officers under the supervision of the executive Government, are ready for discussion. It is probable that, by adopting this course, Bills will come before the Council better prepared than when hurriedly framed for a Council in session, and will be better considered by the Council when brought before them, and thus much unnecessary legislation will be avoided and much public time saved. The adoption of this plan, moreover, will be necessary to secure for you the services of native gentlemen at a distance, and of those persons whose time, like that of the members of the mercantile communities of the Presidency towns, is much occupied with their own private engagements.

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Duties of additional Members of Council. Petions. Correct designation of the Council.

23. The additional Councillors provided for by the Act are to be called in to assist the Council of the Governor General in matters of legislation. Members of the Council will of course exercise their independent judgment in regard to matters brought before them, but the Council at its meetings for making laws and regulations is not to be a body separate and distinct from the Council of the Governor General. Petitions relating to legislative matters should be addressed to the Governor General, or Governor, or Lieutenant Governor in Council, as the case may be; and in recording its proceedings, each Council should be designated according to the form followed in the Act, and no other.

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Laws affecting Non-Regulation Provinces.

27. By Section 25 doubts are removed as to the validity of rules and regulations which have been passed by any of the Governments in India for the territories known as "Non-Regulation Provinces." You will observe, however, that henceforth legislative measures affecting any of the territories, Regulation or Non-Regulation, under the dominion of Her Majesty at the date of the passing of the Act, must be passed either by the Council of the Governor General, or by that of the Government to which such territories may be subject.

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30. By Section 42 the power is conferred upon the Governor in Council (constituted as stated in Section 29) of each of those Presidencies to make laws and regulations for the territories subject to his authority. Your Lordship will observe, however, that while the power of legislation is to a great extent thus restored to the minor Presidencies, much greater control over the exercise of that power is given to the Governor General of India than was the case before the passing of the Act 3rd and 4th William IV. c. 85. The rules for the conduct of business at meetings of the Councils for making laws and regulations are to be submitted for the sanction of the Governor General in Council, * and no law or regulation is to have validity until sanctioned by the Governor General.†

Constitution of the Madras and Bombay Councils.

* Section 37.

† Section 40.

31. It is advisable that the several Legislative Councils should undertake, as far as possible, the necessary legislative business for the territories under their respective jurisdictions. The circumstances of different parts of India are widely different, and may, even under the same general head of administration, require widely different measures of a practical character; and it will be no ground for condemning a measure on any particular subject passed for one Presidency that it differs in some respects from another measure on the same subject for another Presidency. There will, however, always remain some important subjects to which for the most part general legislation alone is applicable, and which should be reserved to be dealt with by the Council of the Governor General. Such are the subjects specified in Section 43 of the Act. If, however, it should appear to the Governor General more expedient that enactments on any of those subjects, so far as regards any Presidency or Lieutenant Governorship, may be more conveniently passed by the Governor or Lieutenant Governor in Council, legislation in regard to those subjects by the local legislature, with the previous sanction of the Governor General, is permitted by the terms of the Section.

Subjects for general and local legislation.

32. There is nothing in the terms of the Section or in any other part of the Act which takes away from the Council of the Governor

General the power of legislation in regard to all matters whatsoever connected with any part of Her Majesty's dominions in India, and it is possible that there may be other subjects than those enumerated which may be considered as properly coming within the cognizance of the highest legislative authority. The division of legislative measures into two classes will not be difficult, and as a general rule the supreme legislature should as little interfere with matters of local administration as a local legislature should be permitted to interfere with those matters of general administration which are reserved to be dealt with by the Council of the Governor General.

EXTRACT (paragraph 3) from a Letter from the Government of India to the Government of Bombay, dated 17th September 1861, No. 1875.

Sittings of the Bombay Council.

3. The Governor General in Council will defer any remarks upon points of detail until he is in possession of the rules for the conduct of business which may be prepared under the directions of His Excellency the Governor of Bombay in Council; but there is one very material question adverted to by the Secretary of State in his despatch,* regarding which the Governor General in Council would be glad to be made acquainted with the views of the Government of Bombay at the same time that the rules are submitted for sanction. The point referred to is that mentioned in paragraph 21 of the despatch in which Sir Charles Wood expresses a strong opinion that the Councils for making laws and regulations should not sit permanently, but should be called together by summons to discuss projects of law previously prepared under the directions of the executive Government. The Government of Bombay is requested to consider whether this course can be conveniently followed, and if so, to state at what season or seasons of the year, and for what continuous period or periods, it will be generally expedient that the Council should sit.

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* Despatch No. 14 of the 9th August 1861 (*see* pages 22 to 28).

EXTRACT (paragraph 3) from a Letter from the Bombay Government to the Government of India, dated 15th November 1861, *No.* 86.

Sittings of the Bombay Council.

3. His Excellency the Governor General in Council will perceive from these rules that the Governor in Council of Bombay entirely agrees with the Secretary of State that the sittings of the Council should not be permanent, but is of opinion that they should be held in December and July—seasons of the year at which all natives and non-official members are generally the least engaged upon their own private affairs, and seasons at which the Council could generally meet with convenience to all parties in Bombay, or at one time in Goozerat, and at the other in the Deccan.

EXTRACTS (paragraphs 2 to 4, and part of paragraphs 5, 16, and 18) from a Letter from the Government of India to the Government of Bombay, dated 11th December 1861, *No.* 2422.

Use of the term "Legislative Council."
Correct designation of the Council.

2. With regard to the use of the term "Legislative Council," the Governor General in Council is desirous to draw attention to the concluding * part of the 23rd paragraph of the Secretary of State's despatch, forwarded to you with my previous letter of September the 17th, in which a desire is expressed that each Council should be designated according to the form followed in the Act, and no other. The object of this is to prevent a recurrence of the inconvenience caused by so ordering the proceedings of the Council at its meetings for making laws and regulations under the Act of 1853 as to make it appear as if, when so employed, it was an institution separate and distinct from the Governor General in Council. Throughout the Act 24 and 25 Vic. c. 67 it will be observed that the Council of the Governor General is the only form used to designate the Council, whether in its executive capacity or when assembled for making laws and regulations; and so also the Council of the Governor, or the Council of the Presidency of Bombay, is used as signifying

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* *See* page 26.

either the Council assembled for executive business, or the Council assembled, with the additional members appointed thereto, at a meeting for the purpose of making laws and regulations.

3. The Governor General in Council considers it of great importance that the object to which Sir Charles Wood has so pointedly drawn attention in the 23rd paragraph of his despatch should be carefully borne in mind, and that no proceedings should be allowed and no phraseology adopted which can give rise to the notion that the Council when sitting for the purpose of making laws and regulations is "a body separate and distinct from the Council of the Governor General," or Governor, as the case may be.

4. In the rules to be adopted for the conduct of business at meetings of the Governor General's Council for making laws and regulations the word "Council" will be invariably used without the addition of "Legislative" or any other distinctive word, and the first rule will recite that the word "Council," as used in the rules, will mean the Council of the Governor General assembled for the purpose of making laws and regulations.

Sittings of the Bombay Council.

5. The Governor General in Council agrees with the Bombay Government that the Council should not sit permanently or throughout the year for the purpose of making laws. The time or times of the year which it may be most convenient to appoint for meetings of the Council for making laws, as well as the period for which it should continue to sit, will probably be best ascertained by practical experiment, and may differ at each Presidency.

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Consideration of Bills by Select Committees.
Discussion and publication of Bills.

16. The experience of the Legislative Council under the Act of 1853 has shown conclusively that a Bill receives its best consideration at the hands of a Select Committee, and it has also been amply proved, if proof of such a point were needed, that amendments made at a meeting of the whole Council, even though they be apparently of an immaterial character, are very likely to lead to contradictions and inconsistencies,

and that a few days should therefore always elapse between the settlement of a Bill in detail by the full Council and the final passing of it, in order to give time for a careful comparison of newly introduced amendments with the older parts of the Bill, so that any oversights may be detected. The Governor General in Council is of opinion that the rules of the Council should provide ample time not only for the discussion of the measures introduced, but also for their publication, so that the public may have a full opportunity of submitting such representations to the Council regarding any pending measure as they may desire to make. If circumstances arise calling for more prompt legislation than the rules permit, the emergency may be met by a suspension of the rules. In support of the views here expressed as to the great advantage of Select Committees, and of allowing some little time to elapse between the settlement of a Bill in full Council and its final passing into law, the Governor General in Council would refer the Bombay Government to the 17th paragraph of Sir Charles Wood's despatch cited on the margin.

"No law, except one arising out of some pressing emergency, should be passed without full opportunity for mature deliberation and discussion, and the intervals of discussion should be such as to allow the members of Council adequate opportunity of reflection and inquiry."

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18. I am desired to suggest that the *assent of the Governor* to a Bill should in all cases be recorded separately from the *Certificate by the President* of the passing of the Bill, and that it should usually be given, not at the time at which the Bill is passed, but subsequently. The assent is intended to be the deliberate and responsible act of the person filling the office of Governor, while the certificate is a mere formal record of a proceeding of the Council by the officer who for the time is presiding over it. The form of assent used by the Governor General consists simply of the words "I assent to this Bill,—Viceroy and Governor General." These words are written by His Excellency at the foot of the Bill as finally revised and passed by the Council, and this copy of the Bill forms a permanent record of the Council.

Assent by the Governor to a Bill. Certificate by the President of the Council of the passing of a Bill.

EXTRACT (paragraphs 6, 7, and 8) from a Letter from the Government of India to the Government of Bombay, dated 25th August 1862, No. 4503.

Submission of local Bills for the previous sanction of the Governor General.

6. The Indian Councils Act, 24 and 25 Vict. c. 67, requires that the previous sanction of the Governor General to any law or regulation which the Governor in Council of any Presidency may propose to make, shall be required only in certain cases, which are enumerated in the 43rd Clause of that Act.

7. The Governor General thinks that, on the whole, it will be most conducive to the interests of good legislation in India that the previous submission of local Bills to His Excellency should be confined to those which fall under the above category, and that when Bills of this nature are sent up they should be accompanied by a very full explanation, showing the grounds on which, in the particular cases submitted, it is desired that the provision of Clause 43 of the 24 and 25 Vict. c. 67, restricting the legislative power of the local Council, should be relaxed.

8. All other Bills will necessarily be transmitted to the Governor General after they have been passed by the Governor's Council and received His Excellency's concurrence, and it is earnestly hoped that whenever they contain provisions of an unusual character, such information may be afforded as may enable the Governor General to perform with discrimination the important duty of granting or withholding his assent.

Letter from the Government of India to the Government of Bombay, No. 5624, dated the 10th October 1862.

Rules for the conduct of business at meetings of Council.

I am directed by the Governor General in Council to transmit for the information of His Excellency the Governor in Council the accompanying copy of a despatch * from the Secretary of State, No. 25, dated the 31st of July, relative to the rules for

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* *See* page 34.

the conduct of business at the meetings of the several Councils for making laws and regulations, and to state for His Excellency's guidance the action which the Governor General in Council proposes to take in regard to the objections urged by the Secretary of State so far as they affect the rules of his own Council.

Use of the term "Session." Continuous sittings of Council. Adjournments.

2. The Governor General in Council believes that the objection put forward by the Secretary of State to the term "Session" is well founded, for it certainly may be held to imply prorogation for definite periods. No difficulty is anticipated in expunging the term where it occurs in the rules of the Governor General's Council. The only effect of this omission would be that during the continuous sittings of the Council, the President at the termination of each sitting would adjourn the Council to a certain day in the same or in the following week, and that at the close of the continuous sittings he would adjourn it *sine die*. This, in point of fact, was the course adopted by the President at the close of the last continuous Legislative sittings of the Governor General's Council.

Introduction of Bills.

3. The views of the Governor General in Council on the point noticed in the 7th paragraph of Sir Charles Wood's despatch, regarding the initiative step for the introduction of Bills, will be referred for the further consideration of the Right Honorable the Secretary of State. Meanwhile it occurs to the Governor General in Council that to remove the appearance of giving to the ordinary members of the Governor General's Council a larger authority in respect to matters of legislation than is given to the additional members of the Council, it might be expedient to make the publication of a Bill subject to the approval of the Governor General alone, instead of the Governor General in Council, whereby all the members of the Council (executive and additional) would be put on the same footing in respect to legislative business.

4. The Secretary of State's suggestions upon these points will be referred, with a recommendation in the sense above given, to the Standing Committee of the Council of the Governor General for making laws and regulations, and subsequently to that Council

itself, with whom, under Clause 18 of the Indian Councils' Act, it rests to make amendments in the rules established for the conduct of business at its meetings, subject to the assent of the Governor General.

EXTRACTS (paragraphs 4 to 9 and paragraphs 11, 14, and 17) from a Despatch from Her Majesty's Secretary of State for India to the Government of India (Legislative), dated the 31st July 1862, No. 25.

Rules for the conduct of business.

4. Your correspondence with the Governments of Madras and Bombay on the subject of the Rules framed by them satisfy me that you have fully entered into the views of Her Majesty's Government in passing the recent "Indian Councils Act." But there are a few provisions and some expressions in the Rules of your own Council and of the other Councils which seem to me to require re-consideration and amendment when a covenient opportunity occurs for revising them. Instead of referring to each set of Rules separately, I shall state some leading principles which I think ought to be most strictly adhered to.

The Legislative Council not distinct from the Executive Council. Meetings of Council.

5. No rule ought to be framed, and no expression ought to be used, tending to create an impression that there is a Legislative Council separate and distinct from the Executive Council. There is only the one Council, that of the Governor General, or of the Governors, as the case may be, which sits with certain members for executive purposes, but who are aided by additional members when the Council meets for the purpose of making laws and regulations. The time and place of meeting, either for executive or legislative purposes, rest exclusively with the head of the Government, and there ought not to be any rule, or any expression used, tending to create an impression that the meetings for the latter purpose are fixed or limited as to time, place, or duration. The convenience of the additional members who may not be resident at, or may be absent from, the place of meeting, requires that ample notice should be given as to the time and place of meeting, and also as to the period of time for

which their presence may probably be required; but this ought to be done by intimation from the head of the Government, and not by rule.

Use of the term "Session."

6. With this view, it would, perhaps, be as well to avoid, in Rules framed for the regulation of the proceedings of the Council at meetings for making laws and regulations, the use of the term "Session," which has a technical but recognized meaning, implying a degree of certainty as to time and duration. The Council, being a permanent body, can have no prescribed Session, and its meetings for the purpose of making laws and regulations rest exclusively with the head of the Government, who, in summoning meetings for this purpose, will be guided by the exigency of the public service and the convenience of the additional members.

Introduction of Bills.

7. Having shown that there cannot be a Session, in the technical sense of the term, the Rule that "a Bill may be sent to the Secretary when the Council is not in Session" manifestly falls to the ground, and I am of opinion that it ought not to be revived in any other form. A Rule, the practical effect of which is, that instead of moving for leave to introduce a Bill into the Council, a member may send it to the Secretary to Government in the Home Department, to be dealt with as if leave had been given to introduce it, appears to me open to serious objection. The power vested in the Council, at its meetings for making laws and regulations, of exercising a control over the introduction of Bills is not to be considered a matter of mere form. There are certain subjects in regard to which the Council has no power to legislate; there are others in regard to which no member or additional member can introduce a Bill without the previous sanction of the Governor General, and others again in regard to which it may, for obvious reasons, be highly inexpedient to attempt legislation. In all such cases the power of imposing a check upon the introduction of Bills can be most effectively exercised at meetings of the Council. It must be further borne in mind that on such questions the additional as well as the ordinary members have the privilege of voting. But the practice under your Rule would go to deprive them of that privilege.

The Government might indeed refuse to take any steps upon a Bill sent to the Secretary, but it is not fitting or expedient that the members of the Executive Government alone should exercise a power which belongs to every member of the Council when assembled for making laws and regulations. For these reasons I am of opinion that the initiative step for the introduction of every Bill should be taken at some such meeting of the Council.

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Select Committees.

8. It appears to me that the only useful purpose for which Select Committees can ever be appointed will be that of reporting on Bills referred under Rule 16. * * * *

9. I proceed to offer a few suggestions on matters of minor importance, some of which may, perhaps, have already occurred to you, now that the operation of these Rules has received the trial of some experience.

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Petitions.

11. By the Madras Rule 14, petitions must relate to some "Bill or other business" under consideration of the Council. No "other business," except the framing of standing orders, can be under the consideration of the Council, and the wide phraseology used might lead to misunderstanding on the part of petitioners.

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Ministerial officer of the Council.

14. There is a difference in these Rules as to the denomination of the principal officer of the Council at meetings for making laws and regulations. In your Council at Bombay and in Bengal he is to be termed Under or Assistant Secretary in the Home Department; at Madras, Clerk to the Council. I am of opinion that the ministerial officer in attendance upon the Council at its meetings for making laws and regulations should bear a designation which implies that he is attached to the establishment of the Council of the Governor General or Governor, as the case may be, and not to that of a separate legislative body. The term "Clerk of the Council" is unknown to the Secretariat of the Governments in India, while that

of Under-Secretary or Assistant Secretary is invariably employed to designate the officer immediately subordinate to Secretary in any dapartment of the business of the Government. The designation therefore should be Under-Secretary or Assistant Secretary, and not Clerk of the Council, and the appointment of any but a Civil Servant to that office should be specially reported under the Civil Service Act of the last Session of Parliament, 24 and 25 Vic. Cap 54.

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17. I agree with you in thinking that, within reasonable limits, uniformity is desirable in the Rules of the local and central Councils in regard to legislation, and should recommend that the object of achieving a nearer approach to this uniformity than has hitherto been attained should be kept in view.

Uniformity in rules of local and central Councils.

EXTRACTS (paragraphs 1 *and* 4*) from a Despatch from Her Majesty's Secretary of State for India to the Government of India, dated the* 15*th May* 1862, *No.* 14.

1. The Penal Code having become the Criminal Law for all India, I am desirous, at this early period of its operation, of drawing your attention to the remarks of the Indian Law Commissioners, in their letter to the Government of India of the 14th October 1837, relative to the serious inconvenience which is likely to arise from uncertain and contradictory constructions of the Code by Courts possessing equally competent authority, and to the course which they suggest, in order to avoid a state of things so undesirable, and so calculated to prejudice the due administration of Justice.

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4. Your own attention is requested to the * remarks of the Commissioners, as to the mode in which those penal laws which from time to time you may find it necessary to pass, should be framed so as to form part of the Penal Code.

Penal legislation.

Note * *See* page 38.

EXTRACT from a Letter from the Indian Law Commissioners to the Government of India, dated 14th October 1837.

It appears to us also highly desirable that if the Code shall be adopted, all those penal laws which the Indian legislature may from time to time find it necessary to pass should be framed in such a manner as to fit into the Code. Their language ought to be that of the Code. No word ought to be used in any other sense than that in which it is used in the Code. The very part of the Code in which the new law is to be inserted ought to be indicated. If the new law rescinds or modifies any provision of the Code, that provision ought to be indicated. In fact the new law ought from the day on which it is passed to be part of the Code, and to affect all other provisions of the Code, and to be affected by them, as if it were actually a clause of the original Code. In the next edition of the Code the new law ought to appear in its proper place.

EXTRACT (paragraphs 2 to 4) from a Despatch from Her Majesty's Secretary of State for India to the Government of India (Legislative), dated the 1st December 1862, No. 35.

Penal legislation by local Governments.

2. Cases no doubt will occasionally occur where special legislation by the local Governments for offences not included in the Penal Code will be required. In these cases the general rule should be to place such offences under penalties already assigned in the Code to acts of a similar character. This mode of legislation though an addition to, cannot be deemed an alteration of the Penal Code. But if any deviation is considered necessary, then the law requires that your previous sanction should be obtained.

3. It was the intention of Her Majesty's Government that, except in local and peculiar circumstances, the Code should contain the whole body of Penal legislation, and that all additions or modifications suggested by experience should from time to time be incorporated in it; and the duty of maintaining this uniformity of course devolves upon your Excellency in Council.

4. As a general rule, for the guidance of the Local Councils, it would probably be expedient, and this appears also to be your own view, that all Bills containing penal clauses should be submitted for your previous sanction.

EXTRACT (paragraphs 1 to 10) from a Despatch from the Government of India to Her Majesty's Secretary of State, dated the 10th October 1862, *No.* 14.

We have the honour to acknowledge the receipt of your Despatch No. 25, dated the 31st of July, relative to the Rules for the conduct of business at the meetings of the several Councils for making laws and regulations.

2. In the 5th paragraph of your Despatch you lay it down as a principle to be strictly observed, that no Rule ought to be framed, and no expression ought to be used, tending to create an impression that there is a Legislative Council separate and distinct from the Executive Council, or that the meetings of the several Councils for the purpose of making laws and regulations are fixed or limited as to time, place, or duration. According to this principle, you object in the following paragraph to the use of the term "Session" as implying a degree of certainty as to time and duration.

Use of the term "Session." Adjournments.

3. Fully admitting the force of your remarks in regard to this point, we agree with you in thinking the term "Session" to be objectionable, and we are of opinion that it may be expunged from the Rules without difficulty. It first occurs in Rules 2 and 3 of the Rules for the conduct of business at the meetings of the Council of the Governor General for making laws and regulations, and both these Rules might easily be omitted. The only effect of the omission would be that during the continuous sittings of the Council, the President, at the termination of each sitting, would adjourn the Council to the Wednesday following (unless there were some special reasons for meeting on an earlier day); and that at the close of the continuous sittings he would adjourn it *sine die*. This, in point of fact, was the

course adopted by the President at the close of our last continuous Legislative sittings.

4. In the 7th paragraph of your Despatch you observe that as there cannot be a Session the Rule that "a Bill may be sent to the Secretary when the Council is not in Session" falls to the ground, and you express an opinion that it ought not to be revived in any other form, it being a rule the practical effect of which would, in your opinion, be to remove the check imposed upon the introduction of Bills, and to deprive the additional members of the power of voting for or against the introduction of Bills.

Rule 18.—"A Bill may be sent to the Secretary when the Council is not in Session, and the Governor General in Council may order its publication, together with the Statement of Ojects and Reasons which accompanies it. In that case it shall not be necessary to move for leave to bring in the Bill, and if the Bill be afterwards introduced it shall not be necessary to publish it again."

5. According to the Rules for the conduct of Legislative business in the Council of the Governor General, the discussion on the principle of a Bill takes place not when a member asks for leave to introduce a Bill, but when he introduces the Bill. The Rule under consideration in no way prevents that discussion, nor does it interfere with any member's right to vote against the introduction of a Bill, or, so far as in him lies, to stop the further progress of the Bill at that stage. The principle of the Bill therefore not being discussed on the motion for leave to introduce a Bill, the motion is really one of mere form, and the leave asked has been, as a matter of fact, invariably granted.

Introduction and publication of Bills of the Governor General's Council.

6. We do not indeed mean to imply that the Council can never be called upon to refuse its assent to a motion for leave to introduce a Bill. Leave might be asked to introduce a Bill the mere title of which might show it to be of so objectionable a character that the Council would have no alternative but to withhold its assent even to the introduction of the Bill. But the Council will in practice have to exercise this power, if at all, so very rarely that it hardly seems necessary specially to provide for the contingency. Moreover, the authority conferred on the Governor General in

Council by the Rule in question is permissive, not imperative, and it is not probable that it would be exercised for the publication of a Bill so objectionable as to merit such summary rejection.

7. On the other hand, the advantages of the Rule seem to us to be very obvious. All Bills brought into the Council of the Governor General require to be published for the space of twelve weeks, and considering that most of those Bills must relate to matters of general administration, it will be admitted that this is not too long a period for the publication of a Bill so as to allow of the local authorities throughout the Empire, and the public generally, giving their opinions upon any proposed law, and stating any objections which they may have to urge. But the time for which it is thought the unofficial members, and particularly the Native members, may be kept together exceeds by only a very few days the period for which Bills are required to be published. Unless therefore some rule similar to that under consideration is maintained, there must be often very great delay before a Bill can become law.

8. Any Native member while at his home may under this Rule send a Bill, with a Statement of Objects and Reasons, for publication, and should the Governor General in Council see no objection to the publication of the Bill, the member who proposed the Bill would, on the Council meeting for legislative purposes, find the Bill ready for discussion.

9. We therefore think that the Rule is calculated to save much valuable time, and to secure for the Bills to which it may be applied fuller consideration than they might otherwise receive.

10. In order, however, to remove the objection taken to the Rule, as having an appearance of giving to the ordinary members of the Governor General's Council a larger authority in respect to matters of legislation than is given to the additional members of the Council, we propose to make the publication of a Bill subject to the approval of the Governor General alone, instead of the Governor General in Council; that is the Governor General and the ordinary members of the Council. This will put all the members of the Council on exactly the same footing in respect to legislative business.

Despatch from Her Majesty's Secretary of State for India to the Government of India (Legislative), dated the 16th December 1862, *No.* 41.

Your Despatch dated 10th October (14) 1862, relative to the conduct of business at the meetings of the Council of the Governor General for making laws and regulations, has been considered by me in Council.

Publication of Bills.

2. With reference to the 4th and following paragraphs of your Despatch, I sanction your proposal to make the publication of a Bill subject to the approval of the Governor General alone instead of the Governor General in Council. I request, however, that on the next adjournment of the Council *sine die* you will submit a report on the operation of the rule, stating how many Bills have been sent for publication to the Secretary since the rules were first promulgated.

Despatch from Her Majesty's Secretary of State for India to the Government of Fort Saint George, dated 25th May 1863, *No.* 2.

1. Your Despatch dated 27th December (No. 23) 1862, transmitting copies of the Proceedings of your Council for the purpose of making laws and regulations and of the amended Rules for the conduct of the business of the Council, has been considered by me in Council.

Appearance of petitioners by Counsel.

2. I will not object to the rules, as revised and amended, although I am still of opinion that Rules XVIII. to XX., respecting the hearing of petitioners either in person or by counsel (and which do not appear in the rules of any other of the Councils) would have been better omitted.

3. In applying these rules you will be very careful to limit the hearing of persons or their counsel to cases only where private rights are in question.

4. There may be many cases where private interests are affected by general measures of a public character, but it is not the prac-

tice in this country to hear counsel upon them, and it would be highly inconvenient to introduce such a practice into any legislative body.

Despatch from Her Majesty's Secretary of State for India to the Government of Fort Saint George, dated 31st July 1863, No. 4.

1. With reference to my Despatch No. 2, dated 25th May last, I herewith transmit copy of No. XVII. of the Rules for the conduct of business at meetings of the Council of the Lieutenant Governor of Bengal for the purpose of making laws and regulations, and also of Mr. Maine's note thereon, dated the 17th March last.

2. In the observations contained in that note I entirely concur, and am of opinion that it would be advisable to restrict the power of appearing by counsel, if regulated by rule at all, to appearance before Select Committees, and that advocates should be placed under the control of the Chairman.

Appearance of petitioners by Counsel.

Copy of No. XVII. of the Rules for the conduct of business at Meetings of the Council of the Lieutenant Governor of Bengal for the purpose of making Laws and Regulations; also copy of Mr. Maine's Note thereon, dated 17th March 1863.

RULE XVII.

If a Bill be pending, peculiarly affecting private interests, and any person whose interests are so affected apply by petition to be heard by himself or his counsel upon the subject of the Bill, an order may be made upon the motion of a member, allowing the petitioner to be so heard either before the Select Committee on the Bill, or before the whole Council, provided the petition be received by the Secretary before the report of the Select Committee on the Bill is sent to him. In no other case or manner shall any stranger be heard by himself or by his counsel.

When and how petitioners may be heard.

Copy of Mr. Maine's Note.

The alterations seem to me to be unimportant with two exceptions, and unobjectionable with one.

In Rule XV. Section 5 words have been introduced making the report of a Select Committee the report of the majority, and the rule no doubt gains in precision by the change.

The new rule which now stands as Rule XVII. appears to me to introduce a very formidable novelty. I have obtained some Bengal papers which show that it was *not* recommended by the Select Committee, but added afterwards at a meeting of the full Council. Some discussion on the proposal, which came from one of the Native members, is said to have taken place, but none is reported. The Lieutenant Governor, Mr. Eden, and the Advocate General, voted against it, but no one else.

I cannot help suspecting it was entered by surprise, and without due reflection. It does not seem to have struck the Council that while these rules furnish ample security against irregularity or disorder on their own part, there is nothing to be found in the rules which can be used to check the license of the counsel who may be addressing them. The hearing may be one in full council with reporters present, and I do not see what is to prevent any conceivable subject from being dragged in, on the score of private interests being somehow implicated with it. The House of Commons has, it is true, no special rules for controlling counsel, but the House of Commons has always in reserve the power of sending an offender to Newgate.

The Bengal Council could, I imagine, refuse to hear any longer an advocate who misconducted himself; but if the topic were exciting, this would probably not be done, if it were done, without a protest from a minority, and would result at all events in much public scandal.

I do not see why the power of appearing by counsel should not at least be confined to appearance before a Select Committee (which except on extraordinary occasions is the practice at home), and there should be, I think, a rule placing advocates under the control of the Chairman.

It may, however, be worthy of consideration whether, in a country in which discussion on paper is the ordinary rule, persons whose private interests may be concerned might not be left to state their case in petition. Advocates are only employed at home in deference to ancient usage, or perhaps because petitions have dwindled to a form.

EXTRACT (paragraphs 5, 6, and 7) from a despatch from Her Majesty's Secretary of State for India to the Government of India (Legislative), dated 17th August 1863, No. 41.

Penal legislation.

5. It appears to me advisable that your Lordship in Council should issue particular instructions to the Local Governments, pointing out to them the inconvenience arising from legislation both by the Supreme and Local Governments for the same offence, and enjoining upon them in every instance in which a penalty for an offence is inserted in any Bill, carefully to consider whether the Penal Code has not already sufficiently provided for the proposed case.

Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

6. Nothing could more strongly exemplify the necessity for such precaution than the provision in the 29th Section of the Act now under consideration. The injury and punishment provided for specially in that Section were amply provided for by Section 426 of the Penal Code and Section 44 of the Code of Criminal Procedure, and a reference to these Sections would have attained the same object, and to as full an extent without incurring the inconvenience of double legislation.

"In cases in which by the sentence or order of any Criminal Court, a fine is imposed upon a conviction for any offence made punishable by fine, it shall be lawful for such Court to order that the fine, or any part thereof, not exceeding the loss appearing to be caused to the person who has suffered by such offence, and any special damage of a pecuniary nature that may have resulted to such person by such offence, and any expenses incurred by the complainant in the prosecution, as the Court may consider reasonable and proper, be paid to or for the benefit of such person according to the discretion of the Court, and in every such case the fine, when levied or paid, shall be paid and distributed accordingly."

7. There may be cases in which it may be expedient for special reasons to modify the privisions of the Penal Code in respect of offences which may alter their character and deserve a different or a more severe punishment than the Code prescribes, through the circumstances of the offender or the capacity he may happen to fill. But in every such case the local Government should submit the matter for your consideration, with a full statement of the grounds on which it is proposed to alter the provisions of the Code, and obtain your previous sanction to the same, as required by the Indian Councils' Act, before laying the measure of which such alteration forms a part before the local Council at its meetings for making laws and regulations.

EXTRACT (paragraphs 2 to 5) from a Letter from the Government of India to the Officiating Secretary to the Government of Bengal (Legislative Department), dated Simla, the 18th May 1864, *No.* 311.

2. With reference, however, to the appointments created by either Bill, I am directed to inquire in the case of the Bill for levying tolls, &c. whether it is expected that the salaries will be defrayed by the tolls leviable under the Act, and in the case of the other Bill, by the special fund to be created under Section XI.; or if not, from what fund it is proposed to provide for these salaries.

A Bill to provide for the periodical inspection of Steam Boilers and prime movers attached thereto in the Town and Suburbs of Calcutta.

A Bill to amend and consolidate the law relating to the collection of Tolls on canals and other lines of navigation, and for the construction and improvement of lines of navigation within the Provinces under the control of the Lieutenant Governor of Bengal.

3. It is presumed that the object of providing a special fund, in the case of the Bill for inspecting steam-boilers, goes to meet the expenses connected with the machinery of the Act, and to obviate the necessity of any demand upon the Imperial Revenue.

4. I am desired to say that it is in this belief that His Excellency has assented to the Act. It is very desirable that when any local Bill establishes a costly machinery for the purpose of carrying out its provisions, that it should at the same time

Provision of means for meeting the expense of carrying out the provisions of a local Act.

provide sufficient means of paying for it without trenching upon the Imperial Revenue, or upon the sources whence the Imperial Revenue is derived.

5. When the case is otherwise, the Governor General may not impossibly be under the necessity of withholding his assent on purely financial grounds, and without any reference to the intrinsic merits of the proposed law.

EXTRACTS (paragraphs 3, 4, 5, 7, *and* 8) *from a Report of the Select Committee appointed to consider and revise the Rules for the conduct of business at Meetings of the Council of the Governor of Bombay, for making Laws and Regulations, dated the* 3*rd September* 1863.

Alterations suggested by the Select Committee appointed to report on the Bombay rules.

3. In accordance with the instructions of Her Majesty's Secretary of State, we have expunged from the Bombay rules the word "Session" wherever it occurred. We have been careful also to avoid using any expressions which might favour the idea that there is a Legislative Council separate and distinct from the Executive Council.

4. We have been careful, too, not to make the intimation as to the time and place of meetings of the Council a matter of rule. In doing this we have obeyed the instructions of Her Majesty's Secretary of State, who has expressed his wish that such intimation should come from the head of the Government.

5. With the view of placing all members of the Council on the same footing in regard to the introduction of Bills, we have framed a Rule which provides that the initiative step (*i. e.* obtaining leave) for the introduction of every Bill shall be taken at a meeting of the Council. This Rule will enable the Council to exercise a control over the introduction of all Bills. This power was not sufficiently recognized in the old Rules in regard to measures proposed by the Executive Government for the adoption of the Council, but is a power which should not, in our opinion, be considered a matter of mere form.

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7. We ought, perhaps, to mention prominently that we have omitted that part of Rule No. 10, now Rule No. 9, which provided that members should keep their seats when addressing the Council. We have followed the Madras Rules in making no provision for the manner in which a member should address the Council. We think that when the principle of a Bill is discussed, members should be allowed, if it be more convenient to them, to stand up while speaking. But when a Bill is discussed in detail by the whole Council, there seems to be a convenience in members keeping their seats while making their remarks, not on the principle, but on the Sections of a Bill.

8. We have also deemed it desirable to provide that each Bill shall be read three times instead of only twice, and to propose some new provisions which shall more clearly define the different stages through which a Bill must pass before it is finally submitted for the assent of the Viceroy. We have also, in addition to the alteration mentioned in paragraph 5, proposed some slight alterations in the procedure which has hitherto been adopted by the Council in regard to legislative measures under its consideration. Our proposals will be found under the head "Bills" (Rules 13 to 21). We trust that the procedure we have suggested will recommend itself to the Council.

EXTRACT (part of paragraph 3) from a Letter from the Government of India to the Government of Bombay, dated 26th September 1864, No. 2922.

Publication of Bills.

The practice of publishing Bills by authority of the Executive has been found most convenient in regard to the Council of the Governor General. It has the very great advantage of placing Bills much longer before the public eye than could otherwise be done without unduly prolonging the sittings of Council. * * * The cases, I am to remark, must be of the very rarest occurrence in which the Council for making laws and regulations would decline to allow the introduction of a Bill.

RULES for the Conduct of Business at Meetings of the Council of the Governor of Bombay held for the purpose of making Laws, and Regulations under the provisions of "The Indian Councils Act, 1861."

(As amended* at a Meeting of the Council on the 1st February 1865).

1. The word "Council," as used in these rules, shall mean the Council of the Governor of Bombay assembled for the purpose of making laws and regulations.

The word "President," as used in these rules, shall mean the Governor, or, in his absence, the senior Ordinary Member of Council present and presiding.

The word "Secretary," as used in these rules, shall mean the Secretary to the Government of Bombay in the Judicial Department. All acts, however, which the Secretary is required by these rules to do, may be done by an Under-Secretary, Assistant-Secretary, or Deputy-Secretary to the Government of Bombay.

MEETINGS.

2. The Council will meet on such days and at such hours as the President shall direct.

3. The President may adjourn, without any discussion or vote, any meeting or business, whether there be a quorum present or not, to any future day or to any part of the same day.

4. Any Member of the Council may propose the adjournment of any particular subject, or that, in accordance with the rules hereinafter in that behalf contained, the subject be referred to a Select Committee of the Council for inquiry or report; but the President alone shall propose the adjournment of the meeting.

5. Any business of the day not disposed of at the time of any adjournment of the Council shall stand for disposal on the next day

* These rules were assented to by His Excellency the Governor on the 6th February 1865.

on which the Council shall meet, and, unless otherwise specially ordered, shall take priority of all other business on that day.

6. If at any time appointed for the holding of any meeting of the Council, or if at any time after the commencement of business the quorum required by Section 34 of "The *Indian* Councils Act, 1861" (that is to say the Governor or some ordinary member of Council and four members) be not present, the President shall adjourn the Council. But in the absence of such President the Secretary shall make an entry in the journal of the Council of the names of the Members present, and the Meeting shall be thereby adjourned.

DISCUSSIONS.

7. The President shall preserve order, and all points of order shall be decided by him, no discussion thereupon being allowed.

8. Any Member may notice a violation of order by drawing the attention of the President to it. When a Member is thus addressing the President, any other Member who may be then speaking shall cease until the point of order is settled.

9. A Member desiring to make any observations on any subject before the Council shall address the President.

10. Any Member may speak at the request and on behalf of another Member who is unable to express himself in the English language.

11. On all matters brought before the Council, after the Member who makes a motion has spoken, each Member may make such observations as he thinks proper. After all the Members have had an opportunity of speaking, any Member may, with the permission of the President, speak once by way of explanation or reply.

12. When, for the purpose of explanation during discussion, or for any other sufficient reason, any Member shall have occasion to ask a question of another Member on any measure then under the consideration of the Council, he shall ask the question through the President.

BILLS.

13. Any Member may move at a meeting of the Council for leave to bring in a Bill, in accordance with the provisions of Section 38 of "The *Indian* Councils Act, 1861," provided that three days' previous notice of the title and subject of the Bill has been given to the Secretary. On making such motion the Member moving shall be at liberty to state, as concisely as may be, the scope of the Bill, and the reasons in support of it; but he may defer this till the first reading, unless the introduction of the Bill be opposed. If the motion be carried in the affirmative, the Member shall send the Bill to the Secretary, with a full statement in writing of its objects and of the reasons for it, and any other papers which he may consider necessary.

14. The Secretary shall forthwith cause the Bill, together with the Statement of Objects and Reasons, to be translated into such language or languages as shall be deemed requisite by the Council, and shall send a copy to each Member, and shall cause the same to be published in the *Bombay Government Gazette.*

15. The Governor, if he see fit, may order the publication of a Bill, together with the Statement of Objects and Reasons which accompanies it, although no motion may have been made for leave to introduce the Bill. In that case it shall not be necessary to move for leave to introduce the Bill; and if the Bill be afterwards introduced, it shall not be necessary to publish it again; and in any case the publication of a Bill in pursuance of an order by the Governor, or of leave given by the Council, shall be deemed to be the introduction of the Bill.

16. No motion that a Bill be read the first time shall be made until seven days after a copy of the Bill and of the Statement of Objects and Reasons has been furnished to each Member.

17. Every Bill shall be read three times before it can be passed, and if the motion for the third reading be carried, the Bill, on being so read, shall be considered as passed.

18. On the reading of a Bill the Secretary shall only read the Title of it, unless the Council requires that the Bill shall be more fully read.

19. If the motion for any reading of a Bill be negatived, such Bill shall be considered as rejected, and shall not be again introduced at any period before the expiration of six months from the date of such rejection.

20. If the motion for the first reading of a Bill be carried in the affirmative, such Bill may be referred to a Select Committee for report, which, when ordered, shall be presented before the Bill is read a second time. On the second reading being carried, the principle of the Bill will be considered as affirmed, and the Council will proceed to consider the Bill in detail. The Council having so examined such Bill, the Bill may then, or on some subsequent day, be read a third time.

21. If the motion for the third reading be carried, and the Bill be passed, the President shall sign a certificate at the foot of the Bill in the following form:—

"This Law was made at a meeting of the Council of the Governor of Bombay, held for the purpose of making laws and regulations, on the ——— day of ———.

———

President."

The Bill shall then be laid before the Governor for the purpose required in Sections 39 and 40 of "The *Indian* Councils Act, 1861," and after it has been assented to by the Governor General, it shall be published in the *Bombay Government Gazette* under the signature of the Secretary.

SELECT COMMITTEES AND AMENDMENTS.

22. Select Committees may be appointed by the Council for any purpose connected with its business. The Council shall name a period within which a Select Committee shall make its report on any Bill, or other matter connected with the business of the Council which may be referred to such Committee, and in fixing such time shall have regard to the nature and importance of the Bill or other matter so referred.

23. When a Bill is referred to a Select Committee for report, it shall form part of the question whether the Report shall be trans-

lated into any native language or languages before the same shall be brought up.

24. The Council may, if necessary, extend the time for receiving the Report of any Select Committee.

25. Reports of Select Committees, when completed, shall be given to the Secretary, who shall forthwith cause them to be printed and translated, if ordered, and shall send printed copies of such reports and translations to each Member of the Council. The Report and the Bill, as approved by the Select Committee, shall at the same time be published in the *Bombay Government Gazette*. When Reports are not translated, Honorable Members not acquainted with the English language may refer to the Oriental Translator to Government for an explanation of the said Reports, which, under the orders of the Honorable the Governor in Council, the Oriental Translator shall be bound to furnish.

26. The Report of a Select Committee on a Bill or other matter shall be taken into consideration as soon as may be practicable, but not until seven days after the Report has been sent to the Members.

27. Any Member wishing to propose an amendment affecting the principle of a Bill, shall send the amendment to the Secretary at least two days before the meeting of the Council at which the Bill is to be considered. The Secretary shall cause every such amendment to be printed, and shall send printed copies of such amendment to all the Members of the Council. When the amendment is moved in Council, it shall be determined whether the same shall be translated or not.

28. If, however, any amendment not affecting the principle of a Bill, as settled by a Select Committee, be proposed without notice while the Council is sitting, the President shall decide whether such amendment shall be considered by the Council at the meeting at which it is proposed, or be deferred to the next or any other subsequent meeting.

29. Amendments shall be considered in the order of the Sections to which they relate, except when an amendment in a Section renders an alteration in an earlier Section necessary.

30. If any amendment, not merely clerical, be made while the Bill, as presented by the Select Committee, is under the consideration of the Council in detail, the motion for the third reading of the Bill shall not be made at the same meeting, but the Bill shall be brought forward again at a future meeting, and may then be read a third time and passed with or without further amendment.

ORDER OF BUSINESS.

31. Before each meeting of the Council the Secretary shall furnish each Member with a list of the business to be brought forward at such meeting.

32. Any Member may make a motion having reference to the business of the Council. On every motion, whether it be for leave to bring in a Bill, or that a Bill be read a first, second, or third time, or for any other purpose, the question, after being put, shall be decided by a majority of votes. In case of a division, the votes shall be taken by the Secretary in consecutive order, from right to left, beginning with the member who makes the motion.

33. Any Member may ask for any papers or returns connected with the business before the Council. The President shall determine, either at the time or at the meeting of the Council next following, whether the papers or returns asked for shall be given.

34. Business shall be transacted in the following order after the President has taken the chair :—

(1) New Members shall be sworn in, or take the necessary affirmations.

(2) The Secretary shall present any Petitions, Bills, and any other communications which may have been received.

(3) The Council will then proceed to consider the Bills and Orders of the day in the order in which they stand on the list of business for the meeting of that day.

(4) Afterwards any Member may make any motion which it may be competent for him to make consistently with "The *Indian* Councils Act, 1861," and these Rules.

When the whole of the business for the day is disposed of, or when there is more business before the Council than it can dispose of on that day, the President shall declare the meeting adjourned to some future day.

35. Strangers may be admitted into the Council Chamber during the sittings of the Council on the order of the President. Application for orders of admission is to be made to the Secretary.

36. The President, on the motion of any Member, may direct at any time during a sitting of the Council that strangers withdraw.

BOOKS AND RECORDS.

37. Journals shall be kept in which all the proceedings of the Council and of Select Committees shall be entered. The Journal of the Council shall be submitted after each meeting to the President for his confirmation and signature, and when signed shall be the record of the proceedings of the Council. The proceedings of each meeting of the Council shall be published in the *Government Gazette* as soon after the meeting as can be conveniently arranged.

38. All documents ordered to be printed or recorded shall be referred to in the Journal, and after being identified by the signature of the Secretary on the original document, shall be kept with the Records.

DUTIES OF THE SECRETARY.

39. The Secretary shall attend at every meeting of the Council and of a Select Committee, and in addition to the other duties especially required by these Rules it shall be his duty :—

(1) To take charge of the Records of the Council.

(2) To keep the Journals of the Council and of the Select Committees.

(3) To keep a Minute Book, in which he shall enter all the proceedings of the Council, and of the Select Committees, in the order in which they occur, and the names of the Members present.

(4) To superintend the printing of all Acts and papers ordered to be printed.

(5) To assist, at all times, the Council and all Committees, not only in framing Bills, but in all other work connected with their duty.

(6) To write all letters ordered by the Council or by any Committee.

40. After the passing of a Bill the Secretary shall revise and complete the marginal notes thereof.

PETITIONS.

41. Petitions preferred by private persons must be addressed to the Governor in Council, and, if in the Vernacular, they must be accompanied by translations. Ordinarily, no reply will be sent to a Petition, and no Petitions will be considered unless they relate to some Bill before the Council; but the Secretary may be ordered, for special reasons, to make such communication to the petitioner as the Council may direct.

42. The President may, for sufficient reasons, suspend any of the foregoing rules.

Despatch from Her Majesty's Secretary of State for India to the Government of India (Legislative), dated the 8th June 1865, No. 29.

Approval of amended Bombay Rules.

I have to acknowledge the receipt of your Legislative Despatch No. 4, dated 7th April 1865, forwarding amended Rules for the conduct of business at meetings of the Council of the Governor of Bombay for making laws, &c. I have to inform you that the Rules as amended have my approval.

EXTRACT (paragraphs 1 and 2) from a Letter from the Government of India to the Bombay Government, dated 18th August 1865, No. 1180.

1. In returning, with the assent of the Governor General signified thereon, the authentic copy of the law * received with your letter No. 138, dated the 15th of June,

* A Bill for the regulation of Gaols, and the enforcement of discipline therein.

I am directed to intimate that the power which is apparently conferred by this Act of creating new offices, involving a charge upon the general revenues, must not be exercised by the Government of Bombay without previous reference to the Government of India.

Creation by local Government of new offices involving a charge upon the general revenues.

2. The Governor General is of opinion that such a Section as Section 4 of the Act, and other Sections which directly or indirectly empower the local Government to create new offices, are beyond the competency of the local Legislature, as being at variance with the provisions of Section 59 of the 3 and 4 Wm. IV. C. 85, and I am to request that in all future cases of the kind there may be an expressed reservation, making all appointments which are to be paid from the general revenues subject to the previous sanction of the Government of India. In the absence of such expressed reservation, the Governor General will be unable to assent to any Bill which purports to create new offices the salaries of which are to be provided from the general revenues.

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